

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

IN RE: TRICOR DIRECT PURCHASER	)	C. A. No. 05-340 (KAJ)
ANTITRUST LITIGATION	)	
_____	)	CONSOLIDATED
	)	
THIS DOCUMENT RELATES TO:	)	
C.A. No. 05-340 (KAJ)	)	
C.A. No. 05-351 (KAJ)	)	
C.A. No. 05-358 (KAJ)	)	
_____	)	

**NOTICE OF TAKING THE VIDEO-TAPED DEPOSITION OF  
MR. EDWARD F. SHERRY**

PLEASE TAKE NOTICE that, pursuant to the Federal Rules of Civil Procedure, Plaintiffs, in the above-referenced action will take the video-taped deposition upon oral examination of Mr. Edward F. Sherry. This deposition will occur as follows:

<u><b>Date</b></u>	<u><b>Time</b></u>	<u><b>Place</b></u>
September 13, 2006	9:30 a.m.	Winston & Strawn LLP Conference Room 44 A 35 W. Wacker Ave Chicago, IL 60601

The testimony of the witness will be video-taped and will be recorded and transcribed by a court reporter. The deposition will continue from day to day until completed. All counsel are invited to attend and cross-examine.

PLEASE TAKE FURTHER NOTICE that, under Federal Rules of Civil Procedure 26(a)(2) (B), 26 (b)(1), and 34, defendants are requested and required to produce the documents identified on Exhibit "A" attached hereto.

Respectfully submitted,

By: 

Jeffrey S. Goddess (Del. Bar No. 630)  
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Dated: August 29, 2006

**EXHIBIT "A" TO THE NOTICE OF DEPOSITION OF EDWARD F. SHERRY**

The Defendants are required to produce the following documents:

1. All documents, work papers, or other materials, electronic or otherwise, not yet produced to the Direct Purchaser Class Plaintiffs in this litigation that:
  - (a) Mr. Sherry is relying upon or intends to rely upon in connection with both of his August 16, 2006 Reports pertaining to class certification in the direct and indirect cases (and any and all opinions expressed therein);
  - (b) were prepared by him or persons working under his direction in connection with his August 16 Class Certification Reports, and upon which Mr. Sherry is relying or intends to rely in any way for any of his opinions in this case, including, without limitation, those documents, work papers, or other materials, created or reviewed in connection with both figure 1 and Table 1 of his Report in the Direct case;
  - (c) relate to and/or reflect all of the "Case Studies in Comparatives" identified on p. 4 of Attachment "B" to Mr. Sherry's Reports; and
  - (d) reflect Mr. Sherry's testimony, reports, and/or opinions in the *Volovik v. Bayer* and *Longs Drug v. Ryder* cases. Please also produce Mr. Sherry's "Working Paper" entitled "Some Economics of Intellectual Property Damages" that is identified in his CV.
2. All syllabi from any academic courses taught by Mr. Sherry relating to antitrust law and/or economics.
3. The underlying data and documents relating to the table identified in paragraph 26 of Mr. Sherry's August 16 Report in the Direct Purchaser Action.
4. The non confidential information from the *Brand Name Prescription Drug Antitrust Litigation* that Mr. Sherry drew upon in forming his opinions in this matter (e.g., at note 38 of the August 16 Report in the Direct Purchaser Action)
5. All documents relating to the phone survey Mr. Sherry refers to in paragraph 133 of his August 16 report in the Direct Purchaser Action.
6. All non-publically available literature referred to in Attachment "B" to Mr. Sherry's August 16 Reports under the heading "Literature Sources-Industry Relevant Information."

**DEFINITIONS AND INSTRUCTIONS WITH RESPECT TO EXHIBIT "A"**

A. This set of document Requests is hereby served on the defendant (hereinafter referred to as "you" or "the deponent").

B. You must produce all of the described documents called for by these Requests. "Document" means all material within the scope of the applicable Rules of Civil Procedure, including but not limited to:

1. All depositions, communications, letters, telegrams, reports, cablegrams, correspondence, memoranda, records, reports, notes, drafts, data, data compilations, spreadsheets, charts, calculations, proposals, minutes, affidavits, books, papers, magazines, newspaper articles, logs, calendars, diaries, journals, lists, brochures, pamphlets, literature, advertising, computations, tabulations, computer printouts, computer files, computer drives, home computer contents, personal computer contents, floppy disks, zip disks, databases, database entries, database queries, database query results, word processing files, spreadsheet program files, bills, statements, invoices, vouchers, bills of lading, schedules, purchase orders, change orders, work orders, contracts, agreements, books of original entry, accounts, checks, tape recordings, photostats, motion pictures, slides, photographs, sketches, drawings, charts, graphs, video recordings, writings, electronic transmissions, e-mail transmissions, images, interoffice communications, satellite network communications, manuals, brochures, computerized memorializations, network communications and transmissions, VSAT network communications, VPN communications and transmissions, transcripts and other similar objects, or any other written, printed, recorded, electronic, electric, magnetic, digital, or video matter or tangible thing on which any words, numbers, or phrases are affixed or conveyed;
2. All depositions and documents, including pleadings, Interrogatory answers, responses to requests for production, responses to requests for admission, and any other document containing statements, admissions, or other matter prepared by or on behalf of you, your party-opponent(s), or codefendants, from any and all other lawsuits or other legal proceedings.
3. Copies of such documents upon which appear any initialing, notation or handwriting of any kind not appearing on the original;
4. Such documents, whether they are prepared by you or your agents, employees, consultants, representatives or attorneys, for their own use, or for transmittal

in any manner, or were received by any means by you and prepared by another; and

5. Such documents, wherever located, whether in the files of any agent, employee, consultant, contractor, representative, or attorney of yours, or in any file in the possession, custody or control of you.

C. In producing the requested documents, you must include all documents or writings of which you have knowledge:

1. whether created by you, sent by you, sent to you, received by you, in your possession
2. whether created by, sent by, sent to, received by, or in the possession of any other person, firm, corporation or other entity
3. whether a previous version, edition, revision or draft; a subsequent version, edition, revision or draft; a superseded version, edition, revision or draft; or an obsolete version, edition, revision or draft
4. that constitute the sought document or writing, or which refer to, relate to, pertain to, or reflect the sought document or writing.

The foregoing is hereby incorporated into each applicable Request in this set as though set forth fully at length as a subpart thereof.

D. Whenever you choose to withhold from production any document called for by these Requests, you must provide a log containing the following information:

1. The title of the document or writing;
2. The number of pages of the document or writing;
3. The identity of all author(s) or drafters of the document or writing;
4. The identity of each person to whom an original or a copy of the document or writing was sent;
5. The subject matter of the document or writing;

6. The subject matter and a description of the material withheld, to the fullest extent possible short of waiving the claim to privilege; and
7. The reason for withholding the document or writing.
8. The identity of each person, firm, corporation or other entity in possession of an original or copy of the document or writing;
9. The identity of each person, firm, corporation or other entity in last known possession of an original or copy of the document or writing;
10. The date the document or writing was created;
11. The version, revision or edition of the document or writing;
12. Whether the document or writing is a draft copy or final version;
13. The identity of all other versions, editions, revisions or drafts of the document or writing (even if superseded or obsolete), together with the creation dates and effective dates of all other versions, editions, revisions or drafts.

The foregoing is hereby incorporated into each applicable Request in this set as though set forth fully at length as a subpart thereof.

E. You have the duty to seasonably supplement your responses into the future.

F. The singular form of a word shall refer to the plural as well and words used in the masculine gender shall also include the feminine.

G. “And” and “or” shall be construed either conjunctively or disjunctively as required by the context of the Request to bring within the scope of the Request any document or writing or information that might be deemed outside its scope by another construction.

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 29, 2006 I electronically filed the foregoing document using CM/ECF, which will send notification of such filing to all registered participants, including:

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I hereby certify that on August 29, 2006 I sent by electronic mail the foregoing document to the following non-registered participants:

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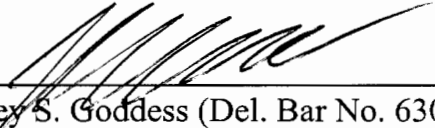
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